

DOCUMENT NO. 5279¹¹
ADOPTED
3/15/90

MEMORANDUM

TO: Boston Redevelopment Authority Board and
Stephen Coyle, Director

FROM: Pam Wessling, Assistant Director
Urban Design and Development
Eric Schmidt, Director of Downtown Planning

DATE: March 15, 1990

SUBJECT: Amendment No. 1 to Memorandum of Agreement with the New
Boston Garden Corporation

We are requesting approval of Amendment No. 1 to the Memorandum of Agreement (MOA), date January 26, 1989, between the City of Boston and the New Boston Garden Corporation, tentative designee as developer of the air rights at North Station.

Background

In January 1989, the City of Boston and New Boston Garden Corporation concluded negotiations concerning the terms of a Memorandum of Agreement. The MOA affirmed that the arena shall be privately financed and defined the scope of the mixed use development proposal, including the financial terms for acquisition of the City's air rights.

The development proposal calls for a new state-of-the-art arena to be built above a new commuter-rail track extension on the Nashua Street lot; three commercial buildings, two facing Causeway Street and one facing Nashua Street, for a total of 2.3 million gross square feet; and two underground parking garages with a total of 2,450 spaces. All construction and operations will be coordinated with the MBTA to ensure that the rerouted Green Line, the commuter rail tracks, the new train room, the arena, and the commercial component of the project shall be built and shall operate successfully.

Financial Terms

The amended MOA requires New Boston Garden Corporation to compensate the City of Boston Twenty million one hundred fifty thousand dollars (\$20,150,000) for the air rights beginning 35 feet above the MBTA controlled Nashua Street lot. The amendment to Section 7 of the MOA (outlined below) provides the City with sufficient security that New Boston Garden Corporation will use due diligence to secure development agreements for both the arena and commercial component of the project.

Below is a summary of the Section 7 amendment:

- * The price for the air rights shall be twenty million one hundred fifty thousand dollars (\$20,150,000). This price represents an increase of one hundred fifty thousand dollars (\$150,000) due to interest earned by the City on the previous deposit of one million dollars (\$1,000,000).
- * Ten million one hundred fifty thousand dollars (\$10,150,000) shall be payable as a good faith deposit on March 15, 1990 in the form of a promissory note. Upon acquisition of the air rights for the construction of a new arena, such note shall be replaced as follows:
- * In the event New Boston Garden Corporation enters into a satisfactory and binding contract with a purchaser for the non-arena portions of the North Station project before a purchase of the air rights by New Boston Garden Corporation, then New Boston Garden Corporation shall pay two million dollars (\$2,000,000) in cash and shall provide a promissory note for the balance of the purchase price in the amount of eighteen million one hundred fifty thousand dollars (\$18,150,000). The note shall mature and be payable to the city ninety (90) days after the issuance of a certificate of occupancy for the arena.
- * In the event New Boston Garden Corporation acquires the air rights before it has entered into a contract with a purchaser for the non-arena portion of the project, then as of that date it shall deliver a promissory note to the City in the amount of twenty million one hundred fifty thousand dollars (\$20,150,000). The note shall be payable on the later to occur of (i) ninety (90) days after the issuance of a certificate of occupancy for the entirety of the new arena, or (ii) thirty (30) days after the execution and delivery by New Boston Garden Corporation of a satisfactory and binding agreement with developer for the sale and development of the non-arena portion of the project.

Tax Abatements

New Boston Garden Corporation has agreed to withdraw seven years of tax abatement requests currently outstanding before the Appellate Tax Board for the periods FY 83-89. This tax abatement withdrawal represents a value to the City of Boston of two million six hundred thousand dollars (\$2,600,000).

An appropriate vote follows:

VOTED: That the Director is hereby authorized to execute Amendment No.1 to the Memorandum of Agreement ~~in~~ between the City and the New Boston Garden Corporation substantially the form attached hereto.

AMENDMENT NO. 1 TO MEMORANDUM OF AGREEMENT

Reference is made to a certain Memorandum of Agreement dated January 26, 1989 (the "MOA") among New Boston Garden Corporation, a Delaware corporation with an address at 150 Causeway Street, Boston, Massachusetts 02114 (the "Garden"); the City of Boston, a public body politic and corporate and a political subdivision of The Commonwealth of Massachusetts acting by and through the Public Facilities Commission, having offices at 26 Court Street, Boston, Massachusetts 02108 (the "City"); and the Boston Redevelopment Authority, a public body politic and corporate, having offices at Boston City Hall, Boston, Massachusetts 02201 (the "BRA").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the MOA as follows:

Section 7 is deleted in its entirety and replaced with the following new Section 7:

7. The City agrees to convey to the Garden good and clear record and marketable title to the Air Rights, excepting only certain air rights above the arena portion of the Garden Complex, upon approval of the Master PDA and execution of Sales and Construction Agreement. The price for the Air Rights shall be Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000.00) payable as follows:

Ten Million One Hundred Fifty Thousand Dollars (\$10,150,000.00) shall be payable as a good faith deposit on March 15, 1990 in the form of a promissory note. Such promissory note shall be non-negotiable, non-transferable, shall not bear interest, and shall be cancellable at the option of Garden in the event it terminates this Memorandum of Agreement at any time prior to the acquisition of the Air Rights. Upon acquisition of the Air Rights for the construction of a new arena, such note shall be cancelled and shall be replaced as follows:

A. In the event the Garden enters into a satisfactory and binding contract with a purchaser for the non-arena portions of the Complex on or before the date it acquires the Air Rights, then as of the date it acquires the Air Rights Garden shall pay Two Million Dollars (\$2,000,000.00) in cash and shall deliver a non-interest bearing promissory note for the balance of the purchase price in the amount of Eighteen Million One Hundred Fifty Thousand Dollars (\$18,150,000.00), which note shall mature and be due and payable to the City ninety (90) days after the

issuance of a certificate of occupancy for the entirety of the new arena.

B. In the event the Garden has not entered into a satisfactory and binding contract with a purchaser for the non-arena portion of the Complex as of the date it acquires the Air Rights, then as of the date it acquires the Air Rights the Garden shall deliver a non-interest bearing promissory note to the City in the amount of Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000.00), which note shall mature and be due and payable on the later to occur of (i) ninety (90) days after the issuance of a certificate of occupancy for the entirety of the new arena, or (ii) thirty (30) days after the execution and delivery by the Garden of a satisfactory and binding agreement with a developer for the sale and development of the non-arena portion of the Complex.

Except as provided herein, the provisions of the MOA are unmodified and are hereby ratified and confirmed.

Executed this 15th day of March, 1990 by:

City of Boston

By:

Lisa G. Chapnick
Public Facilities Director

Boston Redevelopment Authority

By:

Stephen Coyle
its Director

New Boston Garden Corporation

By:

Lawrence C. Moulter
its President

ZP-3483/B

